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DEPT FOR SCA/CEN - O'MARA
DEPT PLEASE PASS TO USTR, COMMERCE, DHS

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SUBJECT: KAZAKHSTAN'S CUSTOMS SHUTDOWN DRAGS ON AMID HOPES FOR
RESOLUTION

Ref: Astana 2716

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11. (SBU) Summary. The Kazakhstani customs shutdown, precipitated by the late-August enactment of a law with severe unintended consequences (reftel), continues. The Government of Kazakhstan (GOK) is pursuing a potential resolution on two different tracks: enactment of a law designed to relax the current requirement for submission of customs export declarations; and finding a legal basis to allow the import of goods currently stuck in customs warehouses. Post is continuing to aggressively push for a temporary solution and looking to ensure that the new draft law currently considered by Parliament is adequate in allowing the import of U.S. goods into Kazakhstan. Please see action request in paragraph 6. End summary.

The Root of the Problem

12. (SBU) The late-August enactment of the law requiring submission of customs export declarations for goods entering Kazakhstan, the culprit behind the ongoing shutdown, was apparently driven by the authorities' desire to introduce a mechanism for more accurate valuation of goods imported into Kazakhstan, particularly from China. The only exemption provided in the law is for goods originating "from countries that do not produce" export declaration forms. According to Kazakhstani customs officials, the U.S., which "produces" (even though it does not allow "sharing" of) customs declarations, does not qualify for the exemption. GOK officials have repeatedly stated to us that they have no choice but to enforce the law strictly as written or face the possibility of being personally prosecuted by the General Procuracy, a special body that answers directly -- and only -- to the country's president.

A Short-Term Solution?

13. (SBU) Following extensive communication with Post and apparent wrangling between the Customs Committee and the Finance Ministry (under the umbrella of which the Customs Committee operates), a possible short-term solution began to take shape. On October 11, Deputy Chairman of Customs Committee Dusebayev informed DTRO Chief that he was authorizing release of all diplomatic shipments (pursuant to the Vienna Convention) and outlined a framework for resolving the stoppage of U.S. imports into Kazakhstan. Given that the enactment of the new draft law is expected soon (various Finance Ministry and Customs officials currently estimate that the law will be enacted within two weeks to a month), Dusebayev told DTRO Chief that he is willing to start enforcing the new law now. He stated that he is issuing an order to allow U.S. goods to pass through

customs upon submission of an invoice with a U.S. notary stamp. Considering a large backlog of U.S. goods currently stuck in Kazakhstani customs warehouses, Post expects that this solution -- assuming it holds -- will lead to a high short-term demand for notary services of Post's Consular Section.

The New Law: Will It Work for the U.S.?

¶4. (SBU) The requirement for a notarization stamp raises serious questions about the acceptability to the U.S. of the GOK's new approach. While the new draft law is still under consideration by Parliament (and is, therefore, subject to change), its original text (provided to the Parliament by the Government) raises concerns. According to Customs Committee sources, this text requires: "a copy of a customs declaration or a substitute document certified by the customs agency of the country of origin." "Certification," Customs officials have explained, implies a stamp.

¶5. (SBU) Finding a short-term solution may be gaining additional urgency. Some companies trying to import U.S. goods into Kazakhstan have contacted Post with concerns that their goods, currently stuck in Kazakhstani customs warehouses, may soon be declared 'contraband' on the basis of a statutory deadline. However, head of the Customs Committee's Legal Department Kasymbekov assured Econoff on October 12 that this threat is non-existent. Goods can be declared 'contraband,' Kasymbekov stated, only if they remain unclaimed for a specified period of time. This, he stressed, is not the case with goods currently held in customs warehouses due to the shutdown.

Action Request

¶6. (SBU) Post requests guidance on two issues. 1. Is it acceptable for Post's Consular Section to notarize invoices in order to assist passage of commercial U.S. goods through Kazakhstani customs? 2. Post requests a joint consultation by DOS, DOC, DHS, and USTR to

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provide analysis of the new draft law as stated in paragraph 4. If the new requirement is unacceptable, Post requests talking points for raising U.S.G. concerns with the GOK.

MILAS